

COMMONWEALTH OF PENNSYLVANIA



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September 5, 2023

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Re: Application of Pennsylvania American Water Company under Section 1102(a) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1102(a), for approval of (1) the transfer, by sale, of substantially all of the Sadsbury Township Municipal Authority's assets, properties and rights related to its wastewater collection and conveyance system to Pennsylvania American Water Company, and (2) the right of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in portions of Sadsbury Township, Lancaster County, Pennsylvania  
Docket No. A-2023-3042058

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Protest and Public Statement in this matter.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Erin L. Gannon  
Erin L. Gannon  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 83487  
EGannon@paoca.org

Enclosures:

cc: The Honorable. Katrina L. Dunderdale (**email only**)  
Certificate of Service

\*4886-7119-5773

CERTIFICATE OF SERVICE

Application of Pennsylvania-American :  
Water Company Under Section 1102(a) of :  
the Pennsylvania Public Utility Code, 66 :  
Pa. C.S. §1102(a), for approval of (1) :  
the transfer, by sale, of substantially all :  
of the Sadsbury Township Municipal :  
Authority’s assets, properties and rights :  
related to is wastewater collection and : Docket No. A-2023-3042058  
conveyance system to Pennsylvania- :  
American Water Company, and (2) the :  
right of Pennsylvania-American Water :  
Company to begin to offer or furnish :  
wastewater service to the public in portions :  
of Sadsbury Township, Lancaster County, :  
Pennsylvania :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Protest and Public Statement, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below. This document was also filed electronically on the Commission’s electronic filing system.

Dated this 5<sup>th</sup> day of September 2023.

SERVICE BY E-MAIL ONLY

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Harrisburg, PA 17101-1923  
717-783-5048  
Dated: September 5, 2023

\*4892-1475-1357

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Pennsylvania-American Water Company under Section 1102(a) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1102(a), for approval of (1) the transfer, by sale, of substantially all of the Sadsbury Township Municipal Authority's assets, properties and rights related to its wastewater collection and conveyance system to Pennsylvania-American Water Company, and (2) the right of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in portions of Sadsbury Township, Lancaster County, Pennsylvania :

Docket No. A-2023-3042058

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PROTEST OF THE  
OFFICE OF CONSUMER ADVOCATE

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Pursuant to 52 Pa. Code §§ 5.51, *et seq.*, the Office of Consumer Advocate (OCA) files with the Pennsylvania Public Utility Commission (Commission) this Protest to the Application of Pennsylvania-American Water Company (PAWC or the Applicant). In support of this Protest, the OCA provides the following information:

1. The protestant is:  
  
Patrick Cicero, Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
717-783-5048

Throughout this Protest, the protestant will be referred to as the Office of Consumer Advocate or OCA.

2. The OCA's attorney is:

Erin L. Gannon  
Senior Assistant Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
717-783-5048  
[EGannon@paoca.org](mailto:EGannon@paoca.org)

3. The OCA is authorized by law to represent the interests of Pennsylvania's utility consumers in all matters before the Commission. 71 Pa. Stat. Ann. §§ 309-1 *et seq.* (Purdon's 1990).

4. Section 1102 of the Public Utility Code requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite to an entity offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 Pa. C.S. § 1102(a)(1)-(3).

5. The Code further requires that a certificate shall only be granted upon findings that the granting of such certificate is "necessary or proper for the service, accommodation, convenience or safety of the public." 66 Pa. C.S. § 1103(a). *See City of York v. Pa. P.U.C.*, 295 A.2d 825, 828 (Pa. 1973) (*City of York*); *see also Popowsky v. Pa. P.U.C.*, 937 A.2d 1040 (Pa. 2007). Moreover, the proposed transaction must "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way." *City of York* at 828.

6. Section 1103 explicitly allows the Commission to impose conditions upon the issuance of a Certificate of Public Convenience. 66 Pa. C.S. § 1103(a). Section 1103(a) of the Code provides: "The Commission, in granting such a certificate, may impose such conditions as it may deem to be just and reasonable." The OCA submits that the Commission may wish to consider the imposition of conditions in order to ensure that the public interest standard is met.

7. On August 24, 2023, the Office of Small Business Advocate (OSBA) filed a Protest and Notice of Intervention in response to the Application. In its Protest, OSBA expressed concerns regarding the impact that the Application may have on customer rates and seeks further information to be disclosed regarding the impact of the acquisition on small business customers. OSBA Protest ¶ 8. OSBA also identified a concern that, based on the content of the Application, PAWC has not shown the Proposed Acquisition would result in an affirmative public benefit, as required under Section 1103(a) of the Public Utility Code and *City of York. Id.* ¶ 9.

8. Preliminarily, the OCA has identified the following areas that require further consideration by the Commission and must be resolved prior to Commission approval of this Application.

a. PAWC states that it “does intend to claim an addition to rate base as a result of this Transaction.” Application ¶ 15. As the Application does not provide information regarding original cost and accumulated depreciation of the STMA wastewater utility plant in service and PAWC has not yet performed an original cost study, it is not known what PAWC’s claimed addition to rate base will be. While the amount of rate base addition, and thus the impact on revenue requirement, will not be known/determined until the future base rate case when the STMA assets are included, the uncertainty is exacerbated because it is not known whether PAWC will seek an acquisition adjustment under Section 1327 of the Public Utility Code, 66 Pa. C.S. § 1327. The risk associated with a potential, future claim for an acquisition adjustment should be considered in assessing the reasonableness of the proposed transaction.

b. In addition, STMA is a collection-only system. Application ¶ 6. In its Application, PAWC has not specified (1) whether the costs of wastewater treatment by

the Christiana Borough Authority and the Township of Salisbury are recovered in the STMA rates that PAWC proposes to adopt at closing and (2) how the Company will charge for those costs. This information is necessary to understand the immediate rate impact on acquired customers and to clarify the relative rates of the acquired and existing PAWC customers, to allow more thorough evaluation of the proposed rates.

c. The Application does not provide sufficient information to support a finding that acquired and existing customers will affirmatively benefit as a result of this proposed transaction. Application ¶ 22. PAWC should furnish the record with additional information to assist the Commission's determination whether to approve the transaction and whether conditions on such approval are necessary.

9. The OCA and PAWC have engaged in informal discovery regarding the Application. It is possible that the OCA's issues will be resolved through the continued exchange of information. Thus, the OCA files this Protest, in part, to allow the parties time to explore this possibility and collect the facts necessary to complete the record before the Commission.

WHEREFORE, the OCA respectfully requests that the application not be granted at this time. If, after receiving information from PAWC, the OCA determines not to oppose the application, the OCA will promptly notify the Commission that its Protest has been satisfied and/or withdrawn.

Respectfully submitted,

/s/ Erin L. Gannon

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717-783-5048

Dated: September 5, 2023

4883-2278-9501

PUBLIC STATEMENT OF THE  
OFFICE OF CONSUMER ADVOCATE  
PURSUANT TO 71 P.S. SECTION 309-4(e)

Act 161 of the Pennsylvania General Assembly, 71 P.S. Section 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Protest and participate in proceedings before the Commission involving the proposed acquisition by Pennsylvania-American Water Company (PAWC) of the Sadsbury Township Municipal Authority (STMA).

On August 3, 2023, PAWC filed an Application under Section 1102(a) of the Public Utility Code for approval of: (1) the purchase of substantially all of the assets of the STMA and (2) the right to immediately offer wastewater service to the public in the area previously served by STMA.

The objective of the Consumer Advocate in filing a Protest in this matter is to protect the interests of PAWC and STMA customers. Through its participation in this proceeding, the Consumer Advocate seeks to prevent ratepayers from paying costs that are unreasonable or otherwise violative of the Public Utility Code. The Consumer Advocate will investigate the proposed transaction and request the Public Utility Commission order all necessary and proper customer protections which are justified, reasonable, and in accordance with sound ratemaking principles.

PAWC provides wastewater services for approximately 97,585 customers across Pennsylvania. STMA serves approximately 251 residential and commercial customers in Sadsbury Township, Lancaster County, Pennsylvania.